

REMARKS UNDER 37 CFR § 1.111

Formal Matters

Claims 36-39, 48-50, 52, 54-65, 68-75, 78, 82-84, 87, 89-90, 92-101, 105, 111-113 and 115-119 are pending after entry of the amendments set forth herein. Claims 48-50, 52, 54-56, 58-65, 68-75, 87 and 92-99 are currently withdrawn from consideration.

Claims 36-39, 57, 78, 82-84, 89-90, 100-101, 105, 111-113 and 115-119 were examined. Claims 36-39, 57, 78, 82-84, 89-90, 100-101, 105, 111-113 and 115-119 were rejected.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

The Office Action

Claims Rejected Under 35 U.S.C. Section 102(e) (Sharkey et al.)

In the Official Action of October 12, 2006, claims 57, 100-101, 113-114 and 116-119 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Sharkey et al., U.S. Patent No. 6,126,682. The Examiner interpreted the intradiscal portion 16 of the catheter of Sharkey et al. as disclosing an ablation device that is straight and at a skewed angle with respect to the introducer. Applicants respectfully traverse, since the intradiscal portion 16 of the catheter is clearly curved as shown in Fig. 4, for example, and therefore does not bend as a straight portion. To further clarify this distinction, Applicants have amended independent claims 57, 101 and 113 to recite that the entire length of the antenna portion that extends from the bend is straight. It is respectfully submitted that Sharkey et al. clearly fails to disclose this feature since the intradiscal portion 116 follows around the inner wall of the nucleus pulposus in a curved configuration.

Accordingly, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 57, 100-101, 113-114 and 116-119 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Sharkey et al., U.S. Patent No. 6,126,682, as being inappropriate.

Claims Rejected Under 35 U.S.C. Section 103(a) (Sharkey et al. in view of Moss et al.)

Claims 36-39, 78, 82-84, 89-90, 105, 111-112 and 115 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Sharkey et al., U.S. Patent No. 6,126,682 in view of Moss et al., U.S. Patent No. 5,810,803. The Examiner admitted that Sharkey et al. fails to disclose an elongated antenna device electrically coupled to a coaxial transmission line that is electrically coupled to a source of microwave energy for delivery microwave energy to effect ablation. However, the Examiner asserted that it would have been obvious to modify the invention of Sharkey et al. to provide a microwave antenna with a connection to the power supply via a coaxial transmission line that is electrically coupled to a source of microwave energy, with the coaxial transmission line including an inner conductor, an outer conductor and a dielectric medium disposed between the conductors.

Even if it would have been obvious to combine the references in the manner suggested by the Examiner, which Applicants do not agree that it would have been obvious, since there is no suggestion to combine in such a manner and the Examiner has not identified any such suggestion, the resulting combination would still not meet all of the recitations of the claims, since Moss et al. fails to make up for the deficiencies in Sharkey et al. in meeting the claim recitations requiring an antenna portion having a deployed shape that is straight and skewed at an angle relative to the longitudinal axis of the probe over an entire expose length of the antenna portion that extends distally from the probe.

Accordingly, in view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 36-39, 78, 82-84, 89-90, 105, 111-112 and 115 under 35 U.S.C. Section 103(a) as being unpatentable over Sharkey et al., U.S. Patent No. 6,126,682 in view of Moss et al., U.S. Patent No. 5,810,803, as being inappropriate.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

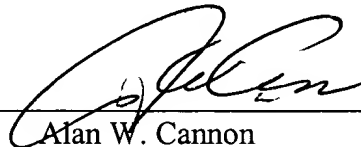
The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-118.

Respectfully submitted,
LAW OFFICE OF ALAN W. CANNON

Date: _____

12/28/06

By: _____



Alan W. Cannon
Registration No. 34,977

LAW OFFICE OF ALAN W. CANNON
942 Mesa Oak Court
Sunnyvale, CA 94086
Telephone: (408) 736-3554
Facsimile: (408) 736-3564